

Filed: September 9, 2021

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**Petitioner’s Motion for a Decision  
Dismissing Her Petition; Diphtheria-  
Tetanus-Acellular-Pertussis (“DTaP”) Vaccine; Hypotonic Failure to Thrive;  
Developmental Delay.**

**DECISION**<sup>1</sup>

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On September 7, 2021, petitioner moved for a decision dismissing her case, stating that “[a]n investigation of the facts and science supporting has demonstrated to the [p]etitioner that she will be unable to prove that she is entitled to compensation in the Vaccine Program,” and thus, “to proceed further would be unreasonable and would waste the resources of the Court, the respondent, and the Vaccine Program.” Petitioner’s Motion for Decision Dismissing Her Petition, filed Sept. 7, 2021, at ¶¶ 1-2 (ECF No. 72). Petitioner states that she understands that a decision by the Special Master will result in a judgment against her, and that she has been advised that such judgment will end all of her rights under the Vaccine Act. *Id.* at ¶ 3. Petitioner states that she intends to protect her right to file a civil action and to elect to reject the Vaccine Program judgment to file a civil action. *Id.* at ¶ 5.

To receive compensation under the Program, petitioner must prove either (1) that he suffered a “Table Injury”—i.e., an injury falling within the Vaccine Injury Table—corresponding to the vaccination, or (2) that he suffered an injury that was actually caused by the vaccination. See §§ 13(a)(1)(A) and 11(c)(1). The records submitted by petitioner show that he does not meet the statutory requirement under 42 U.S.C. § 300aa-11(c)(1)(D)(i) to establish entitlement to compensation. The Federal Circuit has explained that the eligibility requirements in Section 11(c) are not mere pleading requirements or matters of proof at trial, but instead are “threshold criteri[a] for seeking entry into the compensation program.” *Black v. Sec’y of Health & Human Servs.*, 93 F.3d 781, 785-87 (Fed. Cir. 1996).

Accordingly, in light of petitioner’s motion and a review of the record, the undersigned finds that petitioner is not entitled to compensation. **Thus, this case is dismissed. The Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Special Master